

## **Appendix E: Petition for Recusal of Judge; Determination on Recusal Petition**

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**To: Arbitrazh Court for Moscow Oblast**

Plaintiff: ZAO “Social Initiative”  
[address]

Respondent: OAO “Scientific-Production  
Association “Energomash” in the name of  
V. I. Glushko  
[address]

### **PETITION**

#### **On the Recusal by Request of the Plaintiff of Judge G.G. Kuskov**

##### **I.**

Exercising the right envisioned in Article 33 of the APC RF, I hereby petition for the recusal of Judge Kuskov, G.G. on the basis envisioned in point 3 of Article 16 of the APC RF.

In accordance with point 3 of Article 16 of the APC RF, “A judge may not participate in the consideration of a case and is subject to recusal:

. . . . 3) if he personally, directly or indirectly, is interested in the outcome of the case or there are other circumstances which give rise to doubt about his impartiality.”

I believe that the following actually occurring facts are “other circumstances giving rise to doubt about the impartiality “ of the judge.

##### **II.**

In a determination of 26/10/99, Judge Kuskov proposes to the parties, among other things, to present “copies of all court acts adopted in cases connected with the construction of buildings No. 5 and 5”a” (properly certified).”

In connection with this the following question cannot fail to arise:

How could facts of court cases between the parties be known to Judge Kuskov if:

- 1) there is no mention of them in the suit;
- 2) a response to the suit by the respondent was not presented to the court, and at the time of the issuance of the determination concerning the appointment of the case for hearing could not yet have been presented.

Moreover, the judge demands neither more nor less than properly certified copies of court acts, presupposing a controlling force of these acts!

The circumstances set forth above completely clearly demonstrate that Judge Kuskov, already before the issuance of his determination on the appointment of the case for hearing, exhibited direct interest in the outcome of the case by conducting an inquiry and collection of information on circumstances having no relationship to the subject of the dispute, and about which he could not and should not have known until the beginning of the court consideration.

Taking account of all set forth above, I believe that the fact of the existence of circumstances giving rise to doubt about the impartiality of Judge Kuskov and his personal interest in the outcome of the case has been shown, and the present petition on the recusal of Judge Kuskov is well founded and is subject to satisfaction.

### III.

The case filed by the plaintiff in the court on 22/10/99 was appointed for hearing on 22/12/99, that is, in violation of Article 114 of the APC RF on the day following the expiration of the time period envisioned in the given Article for the consideration of the case and the adoption of a decision.

I believe that there are two possible reasons for the failure of Judge Kuskov to observe the period, envisioned by Article 114 of the APC RF, for the consideration of the case filed by myself, the representative of ZAO “Social Initiative” V. I. Kharchenko.

The first possible reason — is the desire of Judge Kuskov, on the basis of the above-stated interest, not to allow the fastest legal issuance of a decision, by using the usual delays.

The second possible reason for the violation of the period for the consideration of the case by the Judge — is the settling of personal scores with me.

On 07/08/99 I submitted a complaint about the actions of Judge Kuskov in connection with the delays he caused in the case of the Individual Private Enterprise (later a limited liability society) “Atlantic” against the Associated Central Base of the Ministry of Internal Affairs.

It is possible that this could be forgotten, if it were not for one important circumstance that became known to me much later after the submission and consideration of my complaint against Judge Kuskov.

In the normal consideration of the dispute between ICP (OOO) “Atlantic” and the Ministry of Internal Affairs, Judge Makovskaya was recognized by the plaintiff as a former employee of the respondent, which was the basis for the recusal of Judge Makovskaya, and for the submission in relation to her of a complaint to the qualifications collegium. And only during the process of the submission and consideration of the petition and complaint did I learn that Judge Makovskaya was the person with whom Judge Kuskov discussed the desirability of acceptance of the suit of ICP “Atlantic” for proceedings. The point is, that the initial petition of suit of ICP “Atlantic” was based on more than 50 contracts, settlements for which had been conducted together by means of mutual set-off and completed with the signature of an “act of consolidation” which revealed the existence of a dispute. Judge Kuskov, to whom the case came, demanded the submission of a separate suit for each contract, which destroyed the scheme of mutual set-offs existing between the parties and complicated the possibility of proof. It is possible that this could be considered [simply] the legal position of Judge Kuskov, but he came to this position during a discussion with me, with the participation of Judge Makovskaya, whose interest became known only much later, during the consideration of the cases on each contract separately.

In the current case Judge Kuskov exhibited an interest in the outcome of the case. And then the situation with the suit of ZAO “Social Initiative” became not a single instance but part of a tendency. The tendency of Judge Kuskov toward an “original” approach to the consideration of cases received by him for proceedings. The “originality” of this is expressed in the coordination of his position and his procedural actions with third parties, not having any procedural relationship to the case, but having their own real interest in it — or, as was stated above, the actions of Judge Kuskov are a desire to settle accounts personally with me for the complaint I made against him.

On the basis of that set forth above, I request that the court recognize the petition as well founded, and the request for recusal — as subject to satisfaction.

**Attachments:**

1. Remarks of the qualifications collegium of 02/10/97
2. Determination of the Moscow Oblast Arbitrazh Court of 26/05/99 [case no.]
3. Determination of the Moscow Oblast Arbitrazh Court of 26/10/99 [case no.]

Representative of  
ZAO “Social Initiative”

[signature]

V.I. Kharchenko

22 December 1999

**Arbitrazh Court of Moscow Oblast**  
[address]

**D E T E R M I N A T I O N**

“ 22 ” December 199 9

Case No. A41-K1-14303/99

The Arbitrazh Court for Moscow Oblast, in the composition of:

Presiding Judge Panchenko V.S. \_\_\_\_\_

Judges: \_\_\_\_\_

Considered in a court session the suit of petition  
(name of the plaintiff)

ZAO “Social Initiative” \_\_\_\_\_

against \_\_\_\_\_  
(name of the respondent)

concerning recusal of Judge Kuskov, G.G. \_\_\_\_\_

with the participation in the session of \_\_\_\_\_

the representatives of the parties (see the record) \_\_\_\_\_

has established: The petition of ZAO “Social Initiative” concerning the recusal of Judge G.G. Kuskov was considered.

The petition is grounded in the existence of circumstances of an interest of the judge, expressed in the receipt of additional information, not from the parties to the case, during the appointment of the case for hearing. In addition, the petitioner refers to the violation by the judge of the procedural periods during the appointment of the case for hearing, and also to the possibility of the settlement of a personal account with the representative of the plaintiff.

The representative of the respondent considers that there is no basis for the satisfaction of the present petition in accordance with the norms of procedural legislation.

Judge Kuskov did not provide an explanation on the petition made, being guided in this by part 1 of Article 20 of the APC RF.

Having considered the present petition, I consider that it is not subject to satisfaction for the following reasons: see other side

[on the other side of the determination form]

In accordance with point 3 of part 1 of Article 16 of the APC RF, a judge may not participate in the consideration of a case and is subject to recusal if he personally, directly or indirectly, is interested in the outcome of the case or there are other circumstances giving rise to doubt about his impartiality.

No documentary evidence was presented by the petitioner confirming the existence of a basis for the recusal of the judge as envisioned in the stated norm of the law.

The existence, in the opinion of the plaintiff, of specific violations of the norms of procedural law, is not a subject for discussion in the consideration of the question of the recusal of a judge. In case of failure to agree with a court act that is adopted, the petition has the right to appeal it in the established manner, referring in this to the violations, in his opinion, of the requirements of the procedural legislation.

No evidence was likewise presented to the court of the existence of circumstances giving rise to doubt about the impartiality of the judge, that is, influence on his professional activities on the part of anyone.

It is necessary to note that the effective Arbitrazh Procedure Code of the RF does not envision the possibility of satisfaction of a petition on the recusal of a judge due to the submission by persons participating in the case of any kind of complaint about the actions of the judge in a case earlier considered by him.

Taking into account that set forth and being guided by Articles 16 and 20 of the APC RF

#### **D E T E R M I N A T I O N :**

The petition of ZAO “Social Initiative” for the recusal of Judge Kuskov G.G. is to be left without satisfaction.

Deputy Chair

V.S. Panchenko